

July 19, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED and VIA EMAIL

Chris Gebhardt
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900, OCE-133
Seattle, Washington 98101

Re: Information Request Letter pursuant to Section 308 of the Clean Water Act

Mr. Gebhardt:

As requested, enclosed are the answers to the EPA Information Request dated May 14, 2013. By this Response, Respondents do not waive, and specifically reserve, any objections regarding jurisdiction, or the applicability of the cited statutory provisions or regulations. Responses marked with an asterisk (“*”) are subject to Respondents’ business confidentiality claim and/or the Privacy Act of 1974 (U.S.C. 522a). Respondents intend full compliance with the Request and acknowledge the obligation and the right to supplement or amend the responses in light of new information or requests for clarification.

Respondents request date certain for EPA determination of these permitting issues.

1. See Attached for copies of Warranty Deeds, Option Agreement, etc.

Richard M. Bambauer individually, as well as Salt Aire, Inc., do not own, nor have ever owned the “the Site”, Pacific County Tax Parcel Numbers 1411125007 and 14110150002.

The property was originally purchased by the Nelson family in 1943. The property has been farmed by the Nelson family since 1943. Vicki A. Larson (Nelson) and R. Terrance Larson, husband and wife purchased the property from Virginia Nelson, individually and as Personal Representative of the Estate of Raymond R. Nelson, Pacific County Superior Court Case No. 94-4-00024-1 on April 3, 1997, Statutory Warranty Deed No. 3007747.

On November 12, 2008, Kindred Island Holdings, LLC acquired various parcels from Terrance and Vickie Larson. Terrance and Vickie Larson were minority members of Kindred Island Holdings, LLC at time of sale closing on November 12, 2008.

Richard M. Bambauer, was one of the managing members of Kindred Island Holdings, LLC since formation in October of 2008. Richard Bambauer was a minority member of Kindred

Island Holdings, LLC, with membership held under Cranberry Coast Properties, LLC, a California limited liability company.

Richard Bambauer had no previous involvement in the Kindred Island property prior to November 12, 2008. Kindred Island Holdings, LLC held an Agreement Regarding Assignment of Claims and Option to Purchase Real Property on (“the Site”) along with several tideland parcels. There was a memorandum of option recorded at closing on November 12, 2008.

One of the members of Kindred Island Holdings, LLC (Gary Esajian with ownership held as Westhaven Holdings, LLC) was the secured property lender on the Kindred Island Holdings, LLC property. This lender, Gary Esajian, an individual, foreclosed on the Kindred Island Holdings property on April 19, 2013 at Sheriff's Sale in Pacific County, and the property was subsequently purchased by Westhaven Holdings, LLC.

Terry and Vicki Larson, Larson Property Management, and Tokeland Golf Links filed suit against Kindred Island Holdings, LLC in Superior Court in King County, Washington. The Larsons were awarded a Default Judgment against Kindred Island Holdings, LLC on 2.15.2013 as well as rescission of the Option Agreement.

No shells have been spread on Kindred Island Holdings, LLC property since January 1, 2011. No shells have been spread on the Larson Property since revocation of the permit on April 19, 2013.

2. No new access roads were constructed on the property to receive shells. No new roads have been constructed since January 1, 2011.

There has been no grading, ditching, ditch work, piping or alterations to existing piping of surface and/or groundwater, catchment systems since January 1, 2011.

There has been no excavation of soil or disposal of any soil on the property since January 1, 2011.

Gorse, Tansy, Scotch Broom and other noxious weeds on the property were sprayed with herbicides in 2009, 2010, 2011 and 2012, in accordance with the demand by Pacific County to remove these noxious weeds.

Gorse Clearing

In April of 2009, Kindred Island Holdings contracted Brinks Land Improvement, Mark Brinks, to grind gorse on the property utilizing a Geo-Trac. The Geo-Trac easily mulches small debris and grinds stumps. This machine has 3.5 psi of ground pressure leaving little ground disturbance, making the removal of the gorse environmentally friendly. This process mulches rather than burning the material. Pacific County indicated they were very pleased with the effectiveness of this Geo-Trac process, eliminating the need for large excavators to dig out the gores and feed large burn piles. No gorse was burned as a result of Brinks Land Improvement grinding.

- a. The area was along Kindred Island, seaward side, along the dike and acreage lying west of the Dike. See attached supporting information .
- b. Clear noxious weeds which are mandated by Pacific County to be removed.
- c. April, 2009, ongoing.
- d. Approximately 46.50 acres, more or less
- e. Pacific County (Tim Crose); Richard M. Bambauer, General Manager of Kindred Island Holdings, LLC, P.O. Box 420, Grayland, Washington 98547 and Terrance Larson, Larson Property Management, P.O. Box 580, Tokeland, Washington 98590. 360.267.2400.
- f. Brink Land Improvement, Mark W. Brink, 83938 Enterprise Road, Pleasant Hill, Oregon 97455. 541.777.7649.
- g. \$26,487.50.
- h. Geo-Trac
- i. See attached for copies of Permits and contract for gorse clearing with Brinks Land Improvement.
- j. Not Applicable
- k. Not Applicable
- l. Not Applicable
- m. See attached for photographs of gorse removal.

Road Rock

Gravel was applied as normal repair and maintenance on the existing dike and ranch access road west of the dike to Tokeland Road. Gravel was purchased and delivered to the site from Hawk Superior Rock.

- a. West dike and ranch access road originating from Tokeland Road.
- b. Normal road maintenance on existing and ongoing farming operation.
- c. December 2011 and December of 2012
- d. Approximately 72.00 tons of rock was delivered in January of 2013 and 84 tons of rock was delivered in January of 2011 and both were spread on existing roads and dike.
- e. Terrance Larson, Larson Property Management, P.O. Box 580, Tokeland, Washington 98590. 360.267.2400.
- f. Hawk Superior Rock, 818 Fir Street, Raymond, Washington 98577. 360.942.5414.
- g. \$2,460.70.
- h. Dump truck and trailer
- i. See attached for invoices from Hawk Superior Rock.
- j. Not applicable

Disking & Mowing

- a. Nelson Stock Ranch
- b. Existing and ongoing agricultural operations
- c. Numerous applications of mowing and disking throughout the property. No time logs are kept relating to daily existing and ongoing tractor operations on the property.
- d. Approximately a total of $250\pm$ acres have been mowed and or disked which is owned by R. Terrance and Vicki A. Larson.
- e. Terrance Larson, Larson Property Management, P.O. Box 580, Tokeland, Washington 98590. 360.267.2400.
- f. Richard Bambauer, Salt Aire Inc., P.O. Box 420, Grayland, Washington, 98547. 360.268.6027 or 559.994.3356.
Terrance Larson, Larson Property Management, P.O. Box 580, Tokeland, Washington 98590. 360.267.2400.
- g. Costs associated with disking and mowing consist of diesel fuel, equipment, and repairs and maintenance to the equipment. No labor costs were paid for tractor work. All equipment is owned.
- h. John Deere 5400 4x4 tractor with bucket. Attachments include Land Pride disc harrow and Bush Hog brush shredder. Steiger Cougar II, 300 horsepower tractor with Kaue 1900 26' wide disc harrow.
- i. See attached invoices for specific costs and expenditures.
- j. Not Applicable
- k. Not Applicable
- l. Not Applicable
- m. Not Applicable

Shell Hauling and Application as Fertilizer

- a. Nelson Stock Ranch
- b. Hauling of crab and shrimp shells and application as fertilizer
- c. Numerous. On September 16, 2011, was the first load delivered to the property from Washington Crab under the August 22, 2011 Permit from Pacific County. Please refer to product delivery database summary for list of actual delivery dates from period January 1, 2011 to April 18, 2013 (last day product delivered under Pacific County Permits).
- d. Approximately $7.34\pm$ acres in 2011; approximately $12.74\pm$ acres in 2012 and approximately $26.83\pm$ acres in 2013 Refer to attached agronomic report.
- e. Terrance Larson, Larson Property Management, P.O. Box 580, Tokeland, Washington 98590. 360.267.2400.
- f. Richard Bambauer, Salt Aire Inc., P.O. Box 420, Grayland, Washington, 98547. 360.268.6027 or 559.994.3356.

Terrance Larson and Steve Larson, Larson Property Management, P.O. Box 580, Tokeland, Washington 98590. 360.267.2400.

- g. *Respondents object to this request to the extent it requests confidential and proprietary business and financial information not relevant to the EPA permitting issues. To the extent any such information must be produced, or is produced, such production will be made by separate document; this information is not producible pursuant to any FOIA request. 5 U.S.C. Sec.552(b)(4).
- h. Mack Dump Truck which is owned by Salt Aire, Inc. Salt Aire Inc provides product hauling for Washington Crab and Westport Seafood Inc.

Ocean Express provides product hauling for Ocean Gold Seafoods and Washington Crab. They utilize various T/A diesel trucks with 50 foot long, sealed, water tight, aluminum trailers to haul product from Westport to the property. A total of three (3) separate trucks have been utilized since January 1, 2011 ..

Spread using John Deere 5400 tractor with bucket

Tilled into soil with a Steiger Cougar II, 300 horsepower tractor with Kause 1900 26' wide disc harrow.

- i. See attached permits.
- j. See attached agronomic report.
- k. The shells are delivered to the ranch in either dump truck or semi truck with trailer. Trucks are driven onto the fields and product is unloaded into piles on the fields. These piles are immediately spread out using the John Deere 5400 tractor at depth of approximately 1 to 3 inches. Once the product is spread out, then shells are disced into the soil within 24 hours of delivery to the site.
- l. Washington Crab Producers
 Bill Weidman
 1980 Nyhus North
 Westport, Washington 98595
 360.268.9161
bweidman@pacseafood.com
 Ocean Gold Seafoods
 Greg Shaughnessy
 1804 Nyhus Avenue
 Westport, Washington 98595
 360.268.6395 or 360.310.0662
gshaughnessy@oceangoldseafoods.com

Westport Seafood, Inc
Mike Cornman
P.O. Box 2071
Westport, Washington 98595
360.268.0133 or 360.581.0982
mike@westportseafoodinc.com

Custom Seafood Services, Inc.
Chris Heckman
206 SW Michigan Street
Seattle, Washington 98106
cc@customsseafoodservices.com

Nelson Crab, Inc.
Kristi Nelson
3088 Kindred Avenue
Tokeland, Washington 98590
800.262.0069
Kristi@nelsoncrab.com

- m. Not Applicable.
3. No.
4. Shells were spread on farm fields under permit obtained from Pacific County. Respondents were told by representatives of Pacific County, SEPA, and Washington State Department of Ecology that no permit was required other than that actually issued by Pacific County. Further, as the subject property is an active farm and Prior Converted Cropland, Respondents were informed that no additional permits were required. Prior to the present inquiry, there has never been objection regarding the historical shell/fertilizer application, nor any allegation that the process involved a pollutant, dredged or fill affecting any wetlands, or waters of the United States, or that the obvious and historical practice was anything other than normal and accepted farming practice using organic food processing wastes.
5. See Attached
6. See Attached Agronomic Letter & Details, and Pacific County's shell application study (Sargent, 2004), attached.
- 7.* See Attached.

8. See attached.

2011- the property was utilized for pasture grass, hay and cattle grazing.

2012 – the property was utilized for pasture grass, hay and cattle grazing.

“*”2013 – the property is planted to approximately 10.73± acres of oats (Fields K-1, K-2, K-4, K-5 and K-6 as of the completion of this letter. Additional acreage will be planted in the summer and fall of 2013 to various grains and/or corn (depending upon seed availability) or pasture grass. WSU Extension Service has indicated they would like to conduct small grain and dry bean test plots on the property in the fall of 2013 and spring of 2014. Exact fields which will be utilized for WSU have not been finalized as of the completion of this information request. Fields not seeded in 2013 will be utilized for pasture grass production.

As a result of the permit revocation from Pacific County, along with the multiple requests from EPA, Army Corps of Engineers, Pacific County, Department of Ecology, Shoalwater Bay Indian tribe, etc, our 2013 cropping season on the PCC areas has been damaged, with resources being diverted to defending ourselves from unsubstantiated accusations regarding land use pollutants, and permitting.

- b. The shells are spread out on the property and disked into the soils. The soils on the property are sand, lack nutrients, and require either organic or chemical amendments to produce commercially viable crops.
- c. The product received from processors consists of several different types of product.

Washington Crab Producers – Crab Shells

The crab shells from Washington Crab consist primarily of claws and legs that have been cooked, and all meat removed at the plant. In addition, Washington Crab product consists of Crab Shell backs from packaging crab sections.

Washington Crab Producers – Shrimp Shells

The shrimp shells from Washington Crab consist of cooked shells, which are then run through a press at the plant.

Ocean Gold – Crab Shells

The product received from Ocean Gold consists of crab shells backs which are chopped at the plant, These shells are from the plant packaging crab sections.

Westport Seafood

The product from Ocean Gold consists of whole crab shells backs, These shells are from the plant packaging crab sections.

Custom Seafood Services (Nelson Crab)

The product received from Custom Seafood Services consists of crab shells backs which are chopped at the plant. These shells are from the plant packaging sections. In addition, there are claws and legs that have been cooked, and all meat removed at the plant.

- d. See agronomic report
 - e*. Pasture grass, oats, wheat, beans, peas, corn, artichokes, asparagus, peppermint, blueberries, raspberries, blackberries, loganberries, wine grapes, pumpkins, squash, herbs, lettuce, tomatoes, safflower, lavender, cucumbers, onions, garlic, etc.
 - f. See attached Product Delivery Summary Reports – 2011, 2012, 2013
 - g. Crab and shrimp shells have been applied on the site since the formation of Nelson Crab in Tokeland in 1934. Recent application under County permit was initiated on August 22, 2011
- 9.* See Attached
- 10.* Respondents object to this request as calling for confidential and proprietary business information and documents outside the scope of the EPA permitting issues. Further, any such information is not subject to any subsequent FOIA request. (5 U.S.C. Sec. 552 (b)(4).
11. See Attached; Sound Ecological Endeavors, LLC Technical Memorandum, and NRCS PCC determination.
12. See Attached; In particular the NRCS PCC determination.
13. In the summer of 2011, before we started hauling shells for Washington Crab, Terrance Larson and Richard Bambauer met with the Department of Ecology (Rick Mraz), inquiring if any permits were required for the spreading of crab and shrimp shells as organic fertilizer compost. Mr. Mraz indicated no permits were required from the Department of Ecology. Mr. Mraz further took us to the EPA office to inquire if any permits were required from EPA. The EPA indicated that no permits were required to spread crab and shrimp shells as organic fertilizer and compost.

In April of 2009, a Planning Permit from Pacific County was issued to Kindred Island Holdings, LLC for the removal of noxious weeds. See attached Permit.

In August of 2011, a Planning Permit from Pacific County was issued to Kindred Island Holdings, LLC for the removal of noxious weeds, which was a renewal of the April 2009 permit. In addition, this permit was expanded to reflect the farm cleanup plan for existing and ongoing agricultural activities, as normal repair and maintenance. This permit included the spreading of organic crab, shrimp and prawn shells as organic compost. See Attached Permit.

Richard Bambauer and Terrance Larson spent considerable time with the head of the Pacific County DCD, Mr. Bryan Harrison. We had multiple site visits with Bryan Harrison as well as multiple meetings at the Pacific County DCD Office reviewing the existing and ongoing agricultural operations on what activities permits were required and which were grandfathered in under the Historical Tokeland Golf Links, PCC's as well as Pacific County Critical Area Ordinance No. 147.

Mr. Harrison initially requested a five (5) year farm plan on repairs and maintenance items which would be conducted under the August 22, 2011 Planning Permit, which included ditch cleaning, noxious weed removal, road repairs, culverts and crossing repairs, etc. When Pacific County issued the August 22, 2011 Permit, the time period was reduced to two (2) years.

Later, in 2012, Pacific County required additional information for a Land Application Permit. On February 26, 2013, Pacific County issued a separate Land Application Permit to Larson Property Management, LLC with an effective date of January 16, 2013. Prior to the January 16, 2013 Land Application Permit, the shell fertilization was under the August 22, 2013 Planning Permit (Permit Number PL1100868B) for farm cleanup under existing and ongoing agriculture.

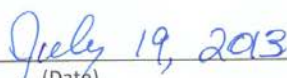
STATEMENT OF CERTIFICATION

CWA Section 308 Information Request issued to
Terry and/or Vicki Larson, Larson Property Management

I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By: 
R. TERRANCE LARSON


(Title)


(Date)

By: /s/ Signed Electronically C. Craig Holley
C. CRAIG HOLLEY, ATTORNEY AT LAW

July 19, 2013
(Date)

STATEMENT OF CERTIFICATION

CWA Section 308 Information Request issued to

Richard M Bambauer, Kindred Island Holdings, LLC and Salt Aire Inc

I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.



By _____

Richard M. Bambauer
Kindred Island Holdings, LLC, General Manager
Salt Aire Inc., President

Date: July 19, 2013